

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
DOCKET NO. OE-0117

IN THE MATTER OF THE COMMISSION ON JUDICIAL CONDUCT.

MEMORANDUM AND ORDER

In a press release dated November 28, 2005, the Commission on Judicial Conduct (commission) reported that it had disciplined a judge. As part of an agreed disposition with the commission, the judge had agreed to an unpaid suspension for one year and a \$50,000 fine. The Supreme Judicial Court (court) had not been informed of the agreed disposition before receiving the press release announcing that the matter had been resolved. Because it appeared that the commission lacked authority under its enabling statute, G. L. c. 211C, to issue a fine and suspension, the Justices ordered the commission to explain why it believed it had authority to impose the discipline described in the press release.

In light of the importance of ensuring public confidence in the judiciary, this matter was addressed in a public administrative proceeding.¹ The matter involves the interpretation of the provisions of G. L. c. 211C, the commission's enabling statute.² We set forth the background,

¹ The court entered an order on December 21, 2005, directing the commission to submit a written report within thirty days. The commission submitted its Report to the Supreme Judicial Court on January 20, 2006. The Justices then held an administrative hearing open to the public on April 26, 2006. The commission was represented by special counsel who submitted a Response of Commission on Judicial Conduct to Order of March 8, 2006 and a follow-up of Commission on Judicial Conduct to hearing of April 26, 2006. All filings were entered on the docket of the Clerk of the Supreme Judicial Court for the Commonwealth.

² Initially, this matter also involved the commission's claim that, "[i]f the judge and the Commission are unable to reach an agreed disposition, the Commission's only alternatives are to proceed to a Public Hearing or to dismiss the complaint." The commission later conceded that it

our discussion and our conclusion in this memorandum.

Background. Effective January 1, 1973, this court adopted a Code of Judicial Conduct. See S. J. C. Rule 3:25, 359 Mass. 841 (1973). To address complaints against judges, including allegations under the Code of Judicial Conduct, in 1977, the court established a Committee on Judicial Responsibility. See S. J. C. Rule 3:17, as appearing in 371 Mass. 905 (1977). The following year, the Legislature created the Commission on Judicial Conduct. See G. L. c. 211C, inserted by St. 1978, c. 478, § 114. Pursuant to the 1978 statute, when first established, the commission could not enter into any agreement to dispose of a matter without the approval of this court. See id. See also former Rule 10 (a) of the Rules of the Commission on Judicial Conduct (1981).

By St. 1987, c. 656, § 2, the Legislature amended G. L. c. 211C, in part, to provide authority for the Commission to enter into agreed dispositions (informal adjustments) without notice to or approval by the court. Since that time, the Commission has read the statute as setting no restrictions on the conditions that can be part of an informal adjustment and as requiring no notice to or approval by this court of any such informal adjustments.³ The duty of statutory interpretation is, of course, for the court, and, as explained below, we construe the statute differently.

and a judge could stipulate to facts and submit that stipulation to the court for a final determination under G. L. c. 211C, § 8 (4). The commission further conceded that such a stipulation could be submitted to the court while retaining confidentiality pursuant to G. L. c. § 6 (4). If a judge and the commission agree to the facts, nothing in the statute would prevent the court from considering the commission's recommendation for discipline, which in those circumstances may be filed under seal.

³ In the view of the commission, no notice to or approval by this court regarding informal adjustments "was necessary or even lawful because of the strict confidentiality requirements."

Discussion. The commission's mandate is set forth in G. L. c. 211C, § 2 (1): "The commission on judicial conduct shall have the authority to receive information, investigate, conduct hearings, and make recommendations to the supreme judicial court concerning allegations of judicial misconduct and allegations of mental or physical disability affecting a judge's performance" (emphasis added). With respect to the commission's "jurisdiction over investigations and recommendations regarding discipline arising from the conduct of all judges" (emphasis added), § 2 (2) states that the "foregoing shall not be construed to derogate the inherent authority of the supreme judicial court to supervise and discipline judges."

Section 8 of G. L. c. 211C governs informal adjustment and sanctions.⁴ Section 8 (1) authorizes the commission to dispose of complaints with the consent of the judge by four specified informal adjustments. These are: (a) admonition; (b) directing professional counselling and assistance; (c) imposing conditions on the judge's conduct; and (d) persuading the judge to retire voluntarily. Section 8 (3) authorizes the commission to issue a private reprimand, but only with the consent of the judge. Section 8 (4) provides that the commission may make recommendations to this court that the following more serious sanctions be imposed: removal; retirement; imposition of discipline as an attorney; imposition of limitations or conditions on the performance of judicial duties; public or private reprimand or censure; imposition of a fine; assessment of costs and expenses; and imposition of any other sanction that is reasonable and lawful.

At issue here is the statutory interpretation of these provisions regarding informal adjustment and sanctions. The crux of the issue is the scope of the informal adjustments the

⁴ See Appendix.

commission may enter into under G. L. c. 211C, § 8 (1), in particular whether the statute permits the commission to include sanctions listed in G. L. c. 211C, § 8 (4), as part of an informal adjustment under G. L. c. 211C, § 8 (1).

Section 8 (1) is specific and limited regarding the four types of dispositions the commission and a judge may agree to as part of an informal adjustment. Of the four types, only § 8 (1) (c), allowing the commission and a judge to agree to "conditions on the judge's conduct," provides some flexibility with respect to dispositions. The commission reads this phrase to grant it the ability to impose any "conditions," including imposition of a fine or suspension, as long as the judge agrees. At the hearing, the commission stated that "the Legislature intentionally created a provision which was unrestricted as to the nature of the remedies or sanctions to which a judge could agree." In the commission's view, the judge can agree to sanctions listed in § 8 (4), including imposition of a fine or suspension, as part of an informal adjustment that need not be reviewed by this court. If the court disagrees with the commission's informal adjustment, the commission contends that the court must begin its own separate formal proceeding without reference to the confidential proceedings of the commission.⁵ We conclude that this construction of § 8 is inconsistent with the plain meaning of the statute and that the disciplinary sanctions enumerated exclusively in § 8 (4) may not be part of an informal adjustment under § 8 (1) (c).

This conclusion is necessary to give meaning to the whole of § 8. Were the commission's reading correct that, as long as a judge agrees, there are no limitations on the conditions that may be imposed as part of informal adjustments, the detailed enumeration of dispositions in § 8

⁵ Argument at hearing on April 26, 2006.

would be unnecessary. Our interpretation gives effect to all of the words of the statute, see Kobrin v. Gastfriend, 443 Mass. 327, 332 (2005), and provides a logical statutory scheme. See Shantigar Found. v. Bear Mountain Bldrs., 441 Mass. 131, 138-139 (2004), quoting Bolster v. Commissioner of Corps. & Taxation, 319 Mass. 81, 84-85 (1946) ("enactment considered as a whole shall constitute a consistent and harmonious statutory provision"). Under our interpretation of § 8 (1), the commission and the judge may agree to conditions that fall short of discipline, as the Legislature's use of the term "informal adjustment" supports; the words "informal" and "adjustment" connote a resolution short of discipline. When discipline (other than a private reprimand with the judge's consent) is imposed, § 8 (4) requires action by this court. The sanctions listed in § 8 (4), such as censure, public reprimand, and imposition of a fine, are not "conditions on the judge's conduct" within the meaning of § 8 (1) (c). Neither is the sanction of suspension.

It is also important to consider the contrast between the language in § 8 (1) (c), which permits the commission to impose "conditions on the judge's conduct," and the language in § 8 (4) (d), which authorizes the commission to recommend that this court impose "limitations or conditions on the performance of judicial duties." The Legislature's use of different language in § 8 (1) and § 8 (4) signifies that each section has a different meaning. The language in § 8 (4) (d) means that limitations or conditions relating to judicial performance or duties, are governed by § 8 (4), which requires a recommendation to this court, and not by § 8 (1). For instance, limitations on the courts where a judge may sit, the types of cases a judge may hear, or the administrative roles the judge may play, are governed by § 8 (4) and require action by this court. The language in § 8 (1), regarding "conditions on the judge's conduct," refers to conditions on a

judge's conduct that do not directly relate to presiding over court business. Such conditions, in the nature of education, training, counselling, or monitoring by the commission, can be imposed under § 8 (1) without action by this court. They may include conditions designed to prevent a judge's behavior from escalating into more serious misconduct.

Conclusion. Under its inherent authority to supervise and discipline judges, this court must ensure that sanctions in judicial misconduct cases address both the public interest in preserving the integrity of the judiciary and the circumstances of the individual judge. As noted at the hearing on this matter, if the commission and a judge agree to particular sanctions without any action by this court, the Justices will not be able to ensure that the sanctions are not inappropriately lenient. The Supreme Judicial Court must exercise its authority so as not to undermine the public trust in the integrity of the judiciary.

We recognize that the commission has operated under a different view of its authority under § 8 (1) for many years. The commission's past practice, however, is not determinative of our interpretation of the statute. The statutory scheme allocates important duties both to this court and to the commission, which share the common goal of preserving public trust and confidence in the judicial branch by maintaining proper standards of judicial conduct. Toward that end, we direct the commission to designate representatives to work with this court to develop rules and procedures consistent with our conclusion that informal adjustments are restricted by the language of § 8 (1) and that more serious sanctions may be imposed only by this court, as provided in § 8 (4).

By the Court,

Clerk

Entered:

APPENDIX.

General Laws c. 211 C, § 8, provides:

" (1) With the agreement of the judge, the commission may by informal adjustment dispose of a complaint at any stage of the proceedings by:

" (a) informing or admonishing the judge that his conduct is or may be cause for discipline;

" (b) directing professional counseling and assistance for the judge;

" (c) imposing conditions on the judge's conduct; or

" (d) persuading a judge to retire voluntarily.

" (2) The commission may dismiss a sworn complaint, a statement of allegations or a formal statement of charges as unjustified or unfounded at any stage during the proceedings.

" (3) The commission may issue a private reprimand with the consent of the judge.

" (4) The commission may recommend to the supreme judicial court one or more of the following sanctions:

" (a) removal;

" (b) retirement;

" (c) imposition of discipline as an attorney;

" (d) imposition of limitations or conditions on the performance of judicial duties;

" (e) public or private reprimand or censure;

" (f) imposition of a fine;

" (g) assessment of costs and expenses;

" (h) imposition of any other sanction which is reasonable and lawful."